



Quick
**A [^] Reference Guide to Civilian Personnel
Flexibilities during the National Emergency**

**DEPUTY ASSISTANT SECRETARY OF THE NAVY
(CIVILIAN PERSONNEL/EQUAL EMPLOYMENT OPPORTUNITY)**

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FOREWORD

This guide is a summary of civilian personnel legislative, regulatory, and policy issues concerning the employment, pay, recognition, and benefits of civilian employees of the Department of the Navy during the time of a National emergency. It was designed to help managers respond to the many issues that have arisen in the wake of the terrorist attacks against the World Trade Center and the Pentagon on September 11, 2001. It is intended as a quick reference guide only. More detailed information may be obtained by contacting the appropriate servicing Human Resources Office or the Director of Civilian Personnel Programs for your command.

Keeping your recognized unions informed of developments and soliciting their input on matters affecting the employees they represent helps elicit cooperation of those employees in dealing with new requirements. In general, activities must continue to meet their statutory obligations under the Federal Service Labor Management Relations Statute during national emergencies, including providing their unions notice of changes to conditions of employment and the opportunity to bargain. Certain limited exceptions exist, however, and managers should consult with their labor relations advisors about specific situations.

For your convenience, a copy of this guide has been posted on the Department's civilian human resources website (<http://www.donhr.navy.mil>). The web-based copy will be updated as new information becomes available.

For up-to-date information, go to <http://www.donhr.navy.mil>

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EMERGENCY SITUATION HIRING FLEXIBILITIES AND INFORMATION

The following information covers staffing options not normally used in day-to-day operations. Contact your Human Resources Office (HRO) or your command's Director of Civilian Personnel Programs for more information or to determine whether these flexibilities apply in your specific situation.

Special Hiring Authorities

Two special types of appointments are available to fill vacancies in support of security, rescue, investigation, and directly related functions associated with the attacks on the World Trade Center and the Pentagon.

- 30-Day Critical Need: Under 5 CFR 213.3102(i)(2) (30-day appointments which may be extended for an additional 30 days.
- Temporary Emergency Need: Under 5 CFR 213.3102(i)(3), the Office of Personnel Management (OPM) has granted authority for agencies to fill, on a temporary basis, positions affected by or needed to deal with the September 11, 2001, attacks. Appointments may be made for up to 1 year.

Appointments under these authorities are in the *excepted*, not competitive, service and do not have benefits (life insurance, health insurance, Thrift Savings Plan). However, two flexibilities have been made available when using the Temporary Emergency Need appointment that may appeal to former Federal employees.

- *Waiver of repayment of voluntary separation incentive pay (VSIP).* Normally, Federal employees who take a VSIP must repay it, if they return to the Federal government within five years, regardless of the type of appointment they receive. When employees are appointed under this authority, repayment will not be required in most cases. Your HRO will be able to advise on whether this exception applies to applicants you are considering.
- *Waiver of dual compensation reduction.* Retired Federal employees who return to the government have their salaries reduced by the amount of their retirement pay. When using the temporary emergency need authority, the commanding officer/activity head may waive the dual compensation reduction. Your HRO can tell you the requirements necessary to grant this kind of waiver.

The waivers of VSIP repayment and dual compensation reduction authorities expire on **September 30, 2002**. Therefore, if appointments are made using these provisions, they cannot extend beyond September 30, 2002.

Some qualifications flexibility are also available with these appointments. In most cases, DON will use the regular OPM qualification standards. However, activities/ commands, in consultation with their HRO, may establish a different qualification standard, if appropriate. Any Department of Defense (DoD) qualification standards remain in effect.

For up-to-date information, go to <http://www.donhr.navy.mil>

Appointment of former military members within 180 days of retirement

Under Title 5 of the United States Code, military members cannot work for the Department of Defense within 180 days of their retirement, unless a waiver has been granted. This provision of law does not apply during a state of national emergency. Therefore, former military members within 180 days of retirement have no additional requirements to meet beyond the normal recruitment and advertising process.

Senior Level Positions

The above flexibilities are available in filling Senior Level positions, as well as positions at lower levels. On a one for one basis, OPM is also authorizing agencies to use a Senior Level space allocation as required to effect immediate appointment of an individual using these flexibilities. Each senior level space allocation must be reported to OPM within 10 days of the appointment. ***Please contact the Executive Personnel and Leadership Development Division (DP6) in the Office of the DASN(CP/EEO) for assistance with Senior Level Positions (202-764-0650 or 0649 (DSN 764)).***

SES Limited Emergency Appointments

Under 5CFR 317.601 agencies have the authority to make SES Limited Emergency appointments of career employees. Requests must be submitted through DASN(CP/EEO) and DoD. OPM will immediately process requests to appoint individuals who are not current career employees, and will consider temporary space allocations for agencies who identify the need as essential to deal with the September 11, 2001, attacks. ***Please contact the Executive Personnel and Leadership Development Division (DP6) in the Office of the DASN(CP/EEO) for assistance with SES Limited Emergency Appointments (202-764-0650 or 0649 (DSN 764)).***

Other Resources

Contracts may be negotiated with private sector temporary firms for services to meet emergency needs. These contracts may be for 120 days and may be extended for an additional 120 days subject to displaced employee procedures.

Many of these flexibilities remain in effect only during the period of the National Emergency. Contact your Human Resources Office for advice on using these authorities.

For up-to-date information, go to <http://www.donhr.navy.mil>

EMPLOYMENT RIGHTS AND BENEFITS OF FEDERAL CIVILIAN EMPLOYEES WHO PERFORM ACTIVE MILITARY DUTY

Civilian Federal employees who are members of the Uniformed Services and who are called to active duty (or volunteer for active duty) are entitled to the following rights and benefits:

Employee Assistance Programs (EAPs)

EAPs can be very helpful to employees and their families in coping with the stress and disruption associated with a call to active military duty. EAPs provide short-term counseling and referral services to help with financial, emotional, and dependent care problems. These services are available to employees who have been called to active military duty (or who volunteer for such duty) and to employees who are family members of those who are performing active military duty. In addition, many EAPs offer services to family members of employees.

Pay

Employees performing active military duty will receive compensation from the Armed Forces in accordance with the terms and conditions of their military enlistment or commission. They will not receive any compensation from their civilian employing agency unless they elect to use military leave or annual leave as described in paragraphs 3 and 4, below. As usual, agencies should continue the payment of availability pay for criminal investigators and annual premium pay for administratively uncontrollable overtime (AUO) work, or regularly scheduled standby duty, on days of military leave or annual leave.

Military Leave

Employees who perform active military duty may request paid military leave, as specified in 5 U.S.C. 6323(a). Under the law, an eligible full-time employee accrues 15 days (120 hours) of military leave each fiscal year. In addition, an employee may carry over up to 15 days (120 hours) of unused military leave from one fiscal year to the next. When the 15 days of military leave that are carried over are combined with the 15 days of military leave accrued at the beginning of the new fiscal year, this produces a maximum military leave benefit of 30 days in a fiscal year. However, since an employee cannot carry over more than 15 calendar days to the next fiscal year, any unused military leave in excess of 15 days will be forfeited at the beginning of the next fiscal year. Part-time career employees accrue military leave on a prorated basis.

Employees who elect to use military leave will receive full compensation from their civilian position for each hour charged to military leave, in addition to their military pay for the same period. 5 U.S.C. 6323 was amended in 2001 to require charges for military leave to be made on an hour for hour basis for all hours the employee would have worked. This does not apply to employees of the United States Postal Service. Additional information on charging military leave can be found in OPM's memorandum of January 25, 2001, at OPM's website at www.opm.gov/oca/compmemo/2001/cpm2001-2.html.

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An employee who performs active military duty may be granted an additional 22 days of military leave under 5 U.S.C. 6323(b) if such leave is granted for the purpose of providing military aid to assist domestic civilian authorities to enforce the law or protect life and property.

Annual Leave

An employee who performs active military duty may request the use of accrued and accumulated annual leave (under 5 U.S.C. 6303 and 6304), and such requests must be granted by the agency. In addition, requests for advanced annual leave may be granted at the agency's discretion. An employee who uses annual leave will receive compensation from their civilian position for all hours charged to annual leave in addition to their military pay for the same period.

Leave Without Pay (LWOP)

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) generally requires an agency to place an employee entering the military on LWOP – *unless* – the employee chooses to be placed on military leave or annual leave, as appropriate, or the employee requests to be separated. Full-time employees do not earn annual or sick leave in a pay period in which they have accumulated 80 hours of LWOP. In addition, part-time employees on LWOP also earn less annual and sick leave, since they earn leave based on the number of hours in a pay status.

Separation From Civilian Service

In an extended emergency, before a Reserve or National Guard member is separated from civilian employment, the member must be given the chance to use any accrued military leave. If a member takes military leave, annual leave, or LWOP and is then separated, the date that the separation is effective shall be the date the military leave expires or at the end of the annual leave or LWOP.

Lump-Sum Leave Payments

Employees who enter into active military duty may choose to (1) have their annual leave remain to their credit until they return to their civilian position, or (2) receive a lump-sum payment for all accrued and accumulated annual leave. However, an agency must make a lump-sum payment for all restored annual leave under 5 U.S.C. 6304(d). There is no requirement to separate from a civilian position in order to receive a lump-sum payment for annual leave under 5 U.S.C. 5552.

When an employee who has been on military duty returns to active Federal service prior to the end of the period covered by the lump-sum payment, the employee MUST refund an amount equal to the pay that covers the period between the date of reemployment and the expiration of the lump-sum leave period. Agencies may not recredit any restored annual leave to the employee's leave account.

For up-to-date information, go to <http://www.donhr.navy.mil>

Health Benefits

An employee who is put in a non-pay status while on military duty can keep their Federal Employees Health Benefits (FEHB) coverage for up to 18 months. During the first 365 days, they are responsible for paying the “regular” employee amount of the premium; they can either pay the premiums on a current basis, or they can incur a debt to the Government and repay it when they return to active Federal service. During the remainder of the 18 months, employees are responsible for the full premium (employee share, plus the Government share), plus a 2 percent administrative fee; these premiums must be paid on a current basis.

At the end of 18 months FEHB coverage terminates. Employees then get a free 31-day extension of coverage during which they can convert to a nongroup policy. (These employees are not eligible for Temporary Continuation of Coverage (TCC)). If an employee doesn’t want to continue the FEHB coverage while s/he is in nonpay status, the employee can elect in writing to have the FEHB coverage terminated. If coverage is terminated at this time, the employee then gets the free 31-day extension and the right to convert.

When an employee who has been on military duty returns to active Federal service, s/he can enroll in an FEHB plan within 60 days of the return to service (as long as the position is not excluded from coverage).

Life Insurance

Employees who are put in a non-pay status while on military duty can keep their Federal Employees’ Group Life Insurance (FEGLI) coverage for up to 12 months. This coverage is free. At the end of 12 months in non-pay status, the coverage terminates. Employees get a free 31-day extension of coverage and have the right to convert to a non-group policy.

If a Federal employee with FEGLI is called-up to active military duty and is killed, death benefits are payable to the employee’s beneficiaries. Accidental death and dismemberment benefits are also payable under Basic insurance (and under Option A, if the employee had that coverage) unless the employee was in actual combat at the time. Accidental death benefits are in addition to regular death benefits. Even if accidental death benefits are not payable, regular death benefits *are* payable.

When an employee who has been on military duty returns to active Federal service, s/he gets back whatever types of life insurance s/he had before going into non-pay status (as long as the position is not excluded from coverage).

Retirement

An employee who is placed in an LWOP status while performing active military duty continues to be covered by the retirement law (i.e., the Civil Service Retirement System [CSRS] or the Federal Employees Retirement System [FERS]). Death benefits will be paid as if s/he were still in the civilian position. If the employee becomes disabled for his or her civilian position during the LWOP and has the minimum amount of civilian service necessary for entitlement to

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disability benefits (5 years for CSRS, 18 months for FERS), the employee will become entitled to disability benefits under the retirement law. Upon eventual retirement from civilian service, the period of military service is creditable under either CSRS or FERS, subject to the rules for crediting military service.

If an employee separates to enter active military duty, he or she generally will receive retirement credit for the period of separation when the employee exercises restoration rights to his or her civilian position. If the separated employee does not exercise the restoration right, but later re-enters Federal civilian service, the military service may be credited under the retirement system, subject to the rules governing credit for military service. However, if the employee covered by CSRS is separated to enter active military duty during a period of war or national emergency as declared by Congress or proclaimed by the President, the employee is deemed not to be separated from his or her civilian position for retirement purposes, unless the employee applies for and receives a refund of his or her retirement deductions.

Thrift Savings Plan (TSP)

For purposes of the TSP, no contributions can be made to the account, either by the agency or the employee, for any time in a LWOP status or for a period of separation. Additional information is available in the TSP Bulletin No. 01-22 or the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation.

If employees are subsequently reemployed in, or restored to, a position covered by FERS or CSRS pursuant to 38 U.S.C. Chapter 43, they may make up missed TSP contributions. FERS employees are entitled to receive retroactive Agency Automatic Contributions (1 percent) and, if they make up their own contributions, retroactive Agency Matching Contributions. Also, if FERS employees separate and their Agency Automatic Contributions and associated earnings are forfeited because they did not meet the TSP vesting requirement, the employees are entitled to have these funds restored to their accounts after they are reemployed. In addition, if employees separate and their accounts are disbursed as automatic cash outs, the employees may return to the TSP an amount equal to the full amount of the payment after they are reemployed. For more information see the TSP Fact Sheet – Benefits that Apply to the Members of the Military Who Return to Federal civilian service.

Military members may of course participate in the TSP for the Uniformed Services established under Public Law 106-398 while on active duty.

For up-to-date information, go to <http://www.donhr.navy.mil>

GENERAL INFORMATION ON BENEFITS TO INJURED EMPLOYEES AND SURVIVORS OF DECEASED FEDERAL CIVILIAN EMPLOYEES

**For specific details, contact your servicing Human Resources Office
or your command's Director of Civilian Personnel Programs**

What kinds of benefits are available to survivors of Federal civilian employees who are killed in the line of duty?

Survivors of Federal civilian employees who are killed in the line of duty may be entitled to:

- Worker's compensation benefits administered by the Department of Labor's Office of Workers' Compensation Programs (OWCP),
- Payments under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS),
- Federal Employees' Group Life Insurance (FEGLI) proceeds,
- Thrift Savings Plan (TSP) account proceeds,
- Social Security survivors benefits administered by the Social Security Administration,
- Lump-sum payments for unpaid compensation (includes salary, leave, travel claims, bonds not completely paid for, etc.).
- A death gratuity payment,
- Public Safety Officer's benefits.

What kinds of benefits are available to Federal civilian employees who are injured in the line of duty?

Federal civilian employees who are injured in the line of duty may be entitled to

- Worker's compensation benefits administered by the Department of Labor's Office of Workers' Compensation Programs (OWCP),
- Disability payments under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS),
- Federal Employees' Group Life Insurance (FEGLI) proceeds,
- Social Security disability benefits administered by the Social Security Administration.

What kinds of benefits are available to Federal civilian employees who are killed or injured, but not while in the line of duty?

- Survivor or disability payments under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS),
- Federal Employees' Group Life Insurance (FEGLI) proceeds,
- Social Security survivor or disability benefits administered by the Social Security Administration,
- Thrift Savings Plan (TSP) account proceeds,
- Lump-sum payments for unpaid compensation (includes salary, leave, travel claims, bonds not completely paid for, etc.).

For up-to-date information, go to <http://www.donhr.navy.mil>

**PREMIUM PAY FOR FEDERAL CIVILIAN EMPLOYEES WHO
PERFORM EMERGENCY WORK IN SUPPORT OF THE NATIONAL
EMERGENCY DECLARED BY PRESIDENTIAL PROCLAMATION OF
SEPTEMBER 14, 2001**

The Department of Defense has directed us to use the annual limitation for premium pay instead of the biweekly limitation for employees performing work directly related to the attacks on the World Trade Center and the Pentagon or their aftermath. Without the DoD direction, we would be required to use the biweekly limitation. Premium pay covers such situations as overtime, night, Sunday, or holiday work; standby duty, administratively uncontrollable overtime work, or availability duty. In most cases, using the annual limitation instead of the biweekly limitation provides the ability to pay an employee more premium pay. Law enforcement officers are not affected by this authority. Their biweekly limitation is covered under a separate provision of the law. Employee compensation laws and regulations are very complex.

If you have any employees that you believe are impacted by this change, you should contact your HRO for further guidance.

For up-to-date information, go to <http://www.donhr.navy.mil>

EMERGENCY LEAVE TRANSFER PROGRAM

The President directed the establishment of an emergency leave transfer program to assist employees affected by the major disasters on 11 September 01. The Department of Defense delegated to the components the authority to administer an "internal" program. The Navy Emergency Leave Transfer Program (NELTP) permits employees to donate annual leave to employees who are affected by the declared emergency for personal needs or to care for a "family member".

Under the NELTP, the use of donated leave is not restricted to medical emergencies, and approved leave recipients are not required to exhaust their own accrued and accumulated annual and sick leave before using donated annual leave. Employees may use leave donated under the NELTP for personal needs or to care for a family member (as that term is defined in 5 CFR 630.902) who was affected by these attacks. In addition, donated leave may be substituted retroactively (beginning no earlier than the date of the emergency) for any period of leave without pay used as a result of the emergency or to liquidate an indebtedness incurred by an employee for advanced annual or sick leave used as a result of the emergency.

Applications to become a leave recipient under NELTP (OPM Form 1637), and to become an emergency leave donor (OPM Form 1638) must be submitted to: ODASN (CP/EEO), Nebraska Avenue Complex, 321 Somers Court NW Suite 40101, Washington, DC 20393-5451; by e-mail to grimsley.lydia@hq.navy.mil; or by fax to 202-764-0788.

The forms for donation or receipt of leave under this program can be obtained from OPM's web site at <http://www.opm.gov/oca/LEAVE/HTML/formindx.htm>.

Since most affected employees were granted excused absence for the immediate emergency, the NELTP will be in place to assist approved leave recipients as the need for donated leave becomes known. If the amount of annual leave donated by Navy employees is not sufficient to meet the needs of its approved leave recipients, OPM will coordinate a Government-wide transfer of donated annual leave from leave donors to leave recipients.

For up-to-date information, go to <http://www.donhr.navy.mil>

DISASTER RELIEF ORGANIZATIONS

You can find a list of special relief funds and national Combined Federal Campaign participating charities involved in relief efforts in response to the September 11, 2001 tragedy at <http://www.opm.gov/guidance/cfcorgs.htm>. The list does not include local organizations. For information on local charities involved in disaster relief efforts in Washington, D.C. and in New York, please contact Ms. Beverly Lofton, CFC of the National Capital Area, at (202) 628-2263; or, Ms. Harriet Grayson, CFC of New York City, at (212) 251-4015.

FEEA WORLD TRADE CENTER/PENTAGON FUND

The Federal Employee Education & Assistance Fund (FEEA) is a private, not-for-profit 501(c)(3) tax-exempt corporation which provides educational benefits and emergency assistance to civilian Federal and postal employees and their dependent family members. FEEA announced the formation of a FEEA World Trade Center/Pentagon Fund to assist civilian Federal employees and their families affected by the tragic events of September 11, 2001. Grants will be made on a case-by-case basis, and normal grant limits will NOT be imposed. FEEA will help with travel expenses for victims' relatives, funeral costs, and other immediate financial needs.

Donations to the Fund may be made by sending a check to: FEEA World Trade Center/Pentagon Fund, 8441 W. Bowles Ave., Suite 200, Littleton, CO 80123-9501, or via credit card by calling FEEA at 303-933-7580.

Families seeking assistance can call FEEA at 1-800-323-4140 or 303-933-7580. To download the emergency assistance application, go to http://www.feea.org/wtc_pentagon_app.pdf

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